

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

906 KAR 1:200. Use of Civil Money Penalty Funds Collected from Certified Long-term Care Facilities.

RELATES TO: KRS 194A.050(1)[, 209.005]

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff), 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff) pertain to the collection and use of civil money penalties (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS) on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) that~~[which]~~ do not comply with applicable federal health and safety laws and regulations. Except for temporary use in the case of sudden nursing facility relocations, natural disasters, or similar emergencies, states are required to obtain prior approval from CMS for any new project, new grantee, or new use of federally imposed CMP funds~~[, and any state-approved use or project that is currently in effect for a period that will endure more than thirty-six (36) months after December 31, 2011]~~. Upon approval by CMS, states may direct collected CMP funds to a variety of organizations if the funds are used in accordance with 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff). This administrative regulation establishes a competitive grant program to provide funding to organizations which offer programs or services approved by CMS for the use of CMP funds, thereby establishing the CMP Fund Grant Program.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "CMP" means civil money penalties imposed by CMS on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) that~~[which]~~ do not comply with applicable federal health and safety laws and regulations.~~[;]~~

(3) "CMS" means the Centers for Medicare and Medicaid Services.

~~(4) ["EAC" means the Elder Abuse Committee created by KRS 209.005.]~~

~~(5)~~ "Funding" means a grant from collected CMP funds distributed by the cabinet upon approval by CMS.

Section 2. Funding Opportunities. Collected CMP funds may be used to support activities that~~[which]~~ benefit Kentucky's residents of certified long-term care facilities, including:

(1) Assistance to support and protect residents of a certified long-term care facility that closes (voluntarily or involuntarily) or is decertified, and may include offsetting the costs of relocating residents to a home and community-based setting or another facility;

(2) Projects that support resident and family councils;

(3) Consumer involvement activities which assure quality care in long-term care facilities; or

(4) Facility improvement initiatives approved by CMS, which may include:

(a) Joint training of facility staff and the cabinet's long-term care facility surveyors;

(b) Technical assistance for facilities implementing quality assurance programs; or

(c) The appointment of temporary management firms.

Section 3. Prohibited Uses of CMP Funds. CMP funds shall not be approved:

- (1) For a project ~~in~~^{for} which a conflict of interest exists or the appearance of a conflict of interest exists;
- (2) If the applicant is currently paid by a federal or state source to perform the same function as the proposed CMP project or use;
- (3) For capital improvements to a long-term care facility, or to build a long-term care facility;
- (4) To pay for services or supplies that are the responsibility of the long-term care facility, including laundry, linen, food, heat, or staffing costs;
- (5) To pay the salaries of temporary managers who are actively managing a long-term care facility; or
- (6) To recruit or provide Long-Term Care Ombudsman certification training for staff or volunteers, or investigate and work to resolve complaints.

Section 4. Applicants. (1) An entity that applies for and receives funding shall be qualified and capable of carrying out the intended project or use described in the State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes.

- (2) Entities that may qualify for funding include:
 - (a) Consumer advocacy organizations;
 - (b) Resident or family councils;
 - (c) Professional or state long-term care facility organizations;
 - (d) State Long-term Care Ombudsman programs;
 - (e) Quality improvement organizations;
 - (f) Private contractors;
 - (g) Academic or research institutions;
 - (h) Certified long-term care facilities;
 - (i) State, local, or tribal governments; or
 - (j) Profit or not-for-profit organizations.

Section 5. Application Process. To apply for funding, an applicant shall:

- (1) Download a copy of the application titled State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes from the cabinet's Web site at <http://chfs.ky.gov/os/oig/cmpfunds.htm>; and
- (2) Complete and email the application to the cabinet at the following Web address: CMFAPPLICATION_OIG@KY.GOV.

Section 6. Review of Applications. (1) Upon receipt of an application, the cabinet shall[:

- ~~(a)] review the application and determine if the application meets the criteria for use of collected CMP funds pursuant to:~~
 - ~~(a)[4.] Sections 2 through 4 of this administrative regulation; and~~
 - ~~(b)[2.] The application's instructions.~~
- ~~(2) [;~~
- ~~(b) Present each application that meets the criteria for use of collected CMP funds at the next scheduled EAC meeting following receipt of the application;~~
- ~~(c) Advise the EAC of each application not approved for review by the EAC due to the receipt of an:~~
 - ~~1. Incomplete application; or~~
 - ~~2. Application that does not meet the criteria for use of collected CMP funds; and~~

~~(d) Notify each applicant electronically if an application is not approved for review by the EAC, including the reason the application was not approved.~~

~~(2) The EAC shall:~~

~~(a) Review each application presented by the cabinet based on the criteria for use of collected funds; and~~

~~(b) Make a recommendation to the cabinet secretary regarding the ability of the applicant's proposal to:~~

~~1. Improve resident outcomes; and~~

~~2. Advance the care and services provided in certified long-term care facilities.~~

~~(3)] Upon[consideration of the recommendation made by the EAC and] review of the application based on the criteria for use of collected CMP funds, the Office of Inspector General[cabinet secretary] shall forward the application to CMS, including an initial determination on the ability of the project to improve resident outcomes and advance the care and services provided in certified long-term care facilities[the secretary's recommended award decision].~~

Section 7. Reporting. If an application is approved by CMS, the organization or entity from which the application originated shall:

(1) Submit a quarterly report on the status of the project to the CMS regional office and the cabinet;

(2) Submit a follow-up report within five (5) calendar days of conclusion of the funded project to the CMS regional office and the cabinet; and

(3) Submit a final report monitoring the success of the project within six (6) months of conclusion of the funded project to the CMS regional office and the cabinet.

Section 8. Denials. An application that is denied shall:

(1) Be accompanied by an explanation; and

(2) Not be subject to an appeal.

Section 9. Incorporation by Reference. (1) The Centers for Medicare and Medicaid Services, Region IV Atlanta, "State Request for Approval of Use of Civil Money Penalty Funds for Certified Nursing Homes", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN D. DAVIS, Inspector General

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: April 11, 2018

FILED WITH LRC: April 12, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2018, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2018, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2018. Send

written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, phone 502-564-2888, email stephanie.brammer@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a competitive grant program to provide funding from civil money penalties (CMP) to organizations that offer programs or services as approved by the Centers for Medicare and Medicaid Services (CMS).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements related to cabinet distribution of CMP funds in the form of grants upon final approval by CMS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements related to cabinet distribution of CMP funds upon final approval by CMS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing requirements related to cabinet distribution of CMP funds upon final approval by CMS.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation currently requires the Cabinet to present each CMP grant application before the Elder Abuse Committee (EAC) for review and recommendation. In accordance with KRS 209.005, the EAC's primary focus is the development of a model protocol on elder abuse and neglect in the Commonwealth and related activities. Because the review of CMP grant applications to determine compliance with criteria established by CMS for the use of CMP funding is unrelated to the role and responsibilities of the EAC, this amendment removes the requirement for EAC review of each CMP application. This amendment also clarifies that denial of a CMP grant application shall be accompanied by an explanation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to streamline internal procedures for review of CMP grant applications.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing requirements related to cabinet distribution of CMP funds upon final approval by CMS.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by setting forth requirements related to cabinet distribution of CMP funds upon final approval by CMS.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Entities that may apply and qualify for funding from collected CMP funds include consumer advocacy organizations, resident or fami-

ly councils, professional or state long-term care facility organizations, State Long-term Care Ombudsman programs, quality improvement organizations, private contractors, academic or research institutions, certified long-term care facilities, state, local, or tribal governments, or profit or not-for-profit organizations.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants seeking funding for proposals that benefit Kentucky's residents of certified long-term care facilities are required to download an application from the cabinet's website and submit the application electronically for review and consideration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by any applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Successful applicants will be awarded funding in the form of a grant approved by CMS to implement proposals which benefit Kentucky's residents of certified long-term care facilities.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding will be needed to implement the provisions of the amended regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts entities which may apply and qualify for funding, including consumer advocacy organizations, resident or family councils, professional or state long-term care facility organizations, State Long-term Care Ombudsman programs, quality improvement organizations, private contractors, academic or research institutions, certified long-term care facilities, state, local, or tribal governments, or profit or not-for-profit organizations. This administrative regulation also impacts the Office of Inspector General, Cabinet for Health and Family Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff), and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school dis-

tricts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff) pertain to the collection and use of civil money penalties (CMP) imposed by the Centers for Medicare and Medicaid Services (CMS) on certified long-term care facilities (serving Medicare and Medicaid beneficiaries) which do not comply with applicable federal health and safety laws and regulations. Except for temporary use in the case of sudden nursing facility relocations, natural disasters, or similar emergencies, states are required to obtain prior approval from CMS for any new project, new grantee, or new use of federally imposed CMP funds. Upon approval by CMS, states may direct collected CMP funds to a variety of organizations if the funds are used in accordance with 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff) and 42 U.S.C. 1396r(h)(3)(C)(ii)(IV)(ff). This administrative regulation establishes a competitive grant program to provide funding to organizations which offer programs or services approved by CMS for the use of CMP funds, thereby establishing the CMP Fund Grant Program.

2. State compliance standards. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate provides that successful applicants must offer services or programs which benefit residents of certified long-term care facilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.